IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.531 OF 1995

Nagdevi Kamgar Sabha ..Petitioner.
Vs.
K.M. Desai & Ors. ..
Respondents.

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Mr. Bhavesh Parmar with Ms. Vijaya Jagtap and Mr. Vinod Shetty i/b Mr. Colin Gonsalves for the petitioner.
Mr. R.J. Mane, AGP for respondent No.2.
Mr. K.S. Bapat for respondent Nos.9, 11, 12, 24, 26, 46, 53, 54, 65, 66, 75, 80, 81, 86, 87, 89, 97 and 99.
Mr. S.K. Talsania for respondent Nos.19 and 56.

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CORAM : DR.D.Y.CHANDRACHUD, J.

15th October, 2004.

P.C. :

1. The petitioner and the seventh Respondent are registered trade unions representing workers in the Nagdevi area. In the Nagdevi area there are a large number of trading establishments dealing with industrial products such as nuts and bolts, pipes and fittings and like articles of industrial use. During the period 1968 and 1987 there were two industrial awards and three settlements between the Seventh Respondent and the association of employers conducting shops in the Nagdevi area.

2. On 27th January, 1992 an arbitration agreement was entered into under section 10-A of the Industrial Disputes Act, 1947

between the Seventh Respondent and Respondents No.3 to 6 who are associations of trading establishments formed according to the respective trades. On 10th September, 1992 a notification was issued under Section 10-A(3) of the Industrial Disputes Act, 1947. The Petitioner submitted a charter of demands to the Commissioner of Labour on 28th August, 1992 and when the arbitration agreement was arrived at between the Seventh Respondent and Respondent Nos.3 to 6, the Petitioner protested before the Commissioner of Labour by letters dated 8th September 1992 and 16th September, 1992. The Petitioner filed a writ petition before this Court (Writ Petition 2773 of 1992) challenging the notification under Section 10-A(3). On 16th October, 1992 the Commissioner of Labour declined to make a reference in respect of the charter of demands raised by the Petitioner on the ground that arbitral proceedings were to take place in pursuance of the notification under Section 10-A and that the Petitioner could raise a dispute before the arbitrator under Section 10-A(3) of the Act. The petition filed by the Petitioner challenging the notification of the arbitration agreement under Section 10-A was disposed of by a learned Single Judge on 18th March, 1993, recording the agreement between the parties that the Petitioner would be entitled

to represent its workers and would be entitled to be heard before the Board of Arbitrators. The Petitioner had also filed another writ petition (Writ Petition 624 of 1994) challenging the order of the Commissioner of Labour declining to make a reference of the charter of demands raised by the Petitioner and by an interim order dated 4th April, 1995 a learned Single Judge directed the arbitrator to arbitrate upon the dispute raised by the Petitioner union as well. Before the board of arbitrators, the Petitioner was impleaded as a party. The Board of Arbitrators, however, declined to issue notices in respect of 700 workers who according to the Petitioner had been left out of the purview of the arbitration.

3. The Board of Arbitrators made an award dated 29th October, 1994. The Petitioner filed the present writ petition (Writ Petition 531 of 1995) in order to challenge the validity of the award. The employers' association, Respondent Nos.3 to 7 challenged the award by filing writ petitions 1273 of 1995 and 43 of 1996. Both the Petitioner and the Seventh Respondent were parties to the aforesaid petition (WP 43 of 1996). By an order dated 17th August, 1998 in Writ Petition 43 of 1996, the arbitral award dated 20th October, 1994 was accepted by all the parties subject to certain

modifications which were agreed upon between the parties.

4. Now in so far as this petition is concerned, the reliefs which have been sought are :

(a) The issuance of a writ of certiorari quashing and setting aside the award of the Board of Arbitrators dated 29th October, 1994;

(b) An order extending the award dated 29th October, 1994 to all the workmen and the establishments set out in the Petitioner's application before the Board of Arbitrators dated 20th March, 1993; and

(c) An order directing that the award be made applicable retrospectively with effect from May 1991.

5. At the interim stage, this Court was informed that six establishments were willing to accept the settlement and their names were taken on record and marked as Exhibit Y. This Court directed that the award of the arbitrators as modified by the settlement filed in this Court shall applicable to the establishments

mentioned in Exhibit Y.

6. The first prayer in the writ petition which is for quashing and setting aside the award of the Board of Arbitrators dated 29th October, 1994 cannot be allowed, in my view, for more than one reason. First and foremost, the award was the subject matter of a challenge before this Court and on 17th August, 1998 in a petition to which both the Petitioner and the Seventh Respondent were parties, the award came to be accepted, save and except for modifications which were agreed to before the Court. The benefit of the award as modified by consent has, therefore, been availed of by a large body of workers. At this stage, therefore, the Petitioner which was a party to Writ Petition 43 of 1996, cannot be heard to challenge the validity of the award. Fairly, Counsel appearing for the Petitioner has also stated that the Petitioner does not at this stage desire to press the challenge to the validity of the award, since the Petitioner does not desire that the benefits which have already accrued to the workmen be disturbed at this stage.

7. The submission which has, however, been urged and

pressed is that the award should be made applicable to various other establishments which are now impleaded as Respondent Nos.9 to 111. The correctness of this submission has to be decided with reference to the provisions of Section 10-A of the Industrial Disputes Act and Section 18(3) thereof. Under sub section (1) of Section 10-A it is open to the employer and the workmen to agree to refer their disputes to arbitration where an industrial dispute exists or is apprehended, at any time before the dispute is referred for adjudication to a Court or Tribunal under Section 10. The arbitration agreement is required to be in the written form and a copy thereof has to be forwarded to the appropriate government and the conciliation officer. Under sub section (3), the arbitration agreement has to be published in the official gazette. Sub section (3-A) of Section 10-A is relevant for the purpose of the present proceedings and it provides as follows :

> "(3-A) Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred to in sub-section (3), issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their

case before the arbitrator or arbitrators."

8. Before a notification is issued under sub section (3A), the appropriate government has to be satisfied that the persons making the reference represent the majority of each party. Upon a notification under sub-section (3A) being issued, employers and workmen who are not parties to the arbitration agreement, but are concerned with the dispute, have to be given an opportunity of presenting their case before the arbitrators. The consequence of a notification under sub section (3-A) of Section 10-A is spelt out in Section 18(3) of the Act. Section 18(3) provides thus ;

> "18.(3) A settlement arrived at in the course of conciliation proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3-A) of Section 10-A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on -
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> (a) all parties to the industrial dispute;
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> (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] [Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
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> (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

> (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

9. Once a notification has been issued under sub section (3-A) of Section 10-A, the arbitral award becomes binding on all parties to the industrial dispute; all other parties summoned to appear in the proceedings as parties to the dispute; the heirs, successors and assigns in respect of the employer and all workmen who are employed in the establishment to which the dispute relates on the date of the dispute and who subsequently become employed in that establishment. In that sense, an arbitral award once a notification is published under sub section 3-A of Section 10-A, stands on the same footing as a settlement arrived at in conciliation proceedings or an award of a Labour Court or Industrial Tribunal.

10. Before the Petitioner can succeed in the relief which has been sought in these proceedings viz. the extension of the award to Respondent Nos.9 to 111, it is necessary that the fundamental

statutory precondition namely, the issuance of a notification under sub section (3-A) of Section 10-A be shown to exist. Unless such a notification has, in fact, been issued the arbitral award cannot have a wider binding effect than to the parties to the arbitral proceedings as specified in sub section (3) of Section 18. In the present case, an affidavit was initially filed on behalf of the State Government by the Assistant Commissioner of Labour in November 2000 clarifying that the arbitration agreement under Section 10-A was published on 10th September, 1992. No notification under Section 10-A(3-A) had been published by the Government. There was a dispute between the parties as to whether a notification under Section 10-A (3A) was in fact published. Counsel appearing on behalf of the Petitioner sought to rely upon a photocopy of an undated notification under Section 10-A (3A). In order to place the matter beyond any doubt, an order was passed by this Court on 1st October, 2004 directing the Second Respondent to file a further affidavit clarifying as to whether (i) a notification was issued under sub-section (3-A) of Section 10-A of the Industrial Disputes Act, 1947; (ii) in the event that such a notification was issued, whether it was issued after an enquiry in order to enable the State Government to arrive at the

satisfaction that the persons making the reference, represented the majority of each party as required under sub-section (3-A) of Section 10-A of the Act; and (iii) whether the notification was published in the official gazette.

11. An affidavit has now been filed by the Assistant Commissioner of Labour, clarifying that while the arbitration agreement under Section 10-A(3) was published on 10th September, 1992, no notification under Section 10-A(3A) has been issued and/or published in the Government gazette. Counsel appearing for the Petitioner, however, sought to urge that the arbitral award proceeds on the footing that a notification under Section 10-A (3-A) was in fact published. The factum of a notification is seriously disputed on behalf of the Respondents. Counsel appearing for the Respondents sought to urge that while a notification under Section 10-A (3) is referred to in a letter dated 6th October, 1992 of the Commissioner of Labour as having been published, there is no reference to any notification under Section 10-A(3-A) as having been issued or published. Similarly it has been urged that none of the three orders that were passed by learned Single Judges of this Court on 18th March, 1993, 19th April,

1993 and 4th April, 1994 refer to the publication of any notification under Section 10-A(3A).

12. In my view, before Respondent Nos.9 to 111 are held down to be bound by the arbitral award, the condition precedent which is contained in Section 18(3) of the Industrial Disputes Act, 1947 must be shown to exist. That condition has the requirement that there has to be a notification under Section 10-A (3-A). The Assistant Commissioner of Labour has specifically clarified on affidavit that no such notification was issued or published. Though repeatedly asked, Counsel for the Petitioner has not produced any gazetted notification. That being so, it is impossible for the Court to extend the provisions of the award in the absence of the mandatory statutory procedure having been followed.

13. There is no dispute between the learned counsel that out of the three members of the Board of Arbitrators, one has since expired, while a second is now bed ridden and is now not in a position to carry out any professional work. This factual position has not been disputed before the Court. The only appropriate direction would be to grant liberty to the Petitioner to follow such

remedies as are open in industrial law in respect of the terms and conditions of service of those workmen working in the establishments which have not been brought under the purview of the arbitral award of 1994. The Petitioner would be at liberty to pursue such remedies as are open in law. In the facts and circumstances, I am of the view that no further reliefs can be granted in these proceedings under Article 226.

14. However, it is clarified that the six establishments who are not parties to the arbitration agreement and who have accepted the arbitral award during the pendency of these proceedings shall continue to be governed by the arbitral award as modified by the settlement between the parties.

The Petition is disposed of accordingly. No costs.